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**The public charge for *hubris* against slaves:  
the honour of the victim and the honour of the *hubristês***

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## 1. Introduction

Four sources from the fourth century BCE state that the Athenian law on the *graphê hubreôs* covered also acts of *hubris* committed towards (εἰς) slaves (Dem. 21.47-49; Aeschin. 1.17; Hyp. fr. 120; Lyc. fr. 10-11.2 = Athen. 6.266f-267a).<sup>1</sup> There is only one passage, to my knowledge, which may be reasonably understood as referring to such a charge brought for *hubris* committed against (what may possibly be) a slave: Din. 1.23 informs us that an Athenian lawcourt once convicted and passed the death penalty on Themistius of Aphidna because he assaulted a Rhodian lyre player at the Eleusinia.<sup>2</sup> This Rhodian lyre player may have been a freedwoman, or a metic, but we cannot exclude the possibility that she may have been a slave. This is all the evidence we have for the actual use of the *graphê hubreôs* against slaves, and this paraphrase exhausts the information provided by the passage. We should not extrapolate from the paucity of the documentation that the procedure was hardly ever used in this way<sup>3</sup> – the evidence of the orators is notoriously idiosyncratic in its coverage,<sup>4</sup> and the Old Oligarch (1.10-12), for instance, gives the opposite impression that the procedure was used too frequently; we get the same impression from Dem. 21.49, where Demosthenes states that many had been executed for committing *hubris* against slaves (however exaggerated this claim may be). But the scanty evidence makes it impossible to provide a proper study of these charges, and it is not my intention here to attempt such a study. Exploring the issue of the possibility of a *graphê hubreôs* against a slave can rather serve as a magnifying glass which will allow us to identify certain criticalities in our understanding of what *hubris* was and how it was

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<sup>1</sup> The provision is also found in two documents, at Aeschin. 1.16 and Dem. 21.47, purporting to report the actual law. Both documents are, however, forgeries: see Fisher (2001) 138-40; Harris in Canevaro (2013) 224-31. In any case, the provision is safely attested in the paraphrases.

<sup>2</sup> Pace MacDowell (1976) 29, Fisher (1992) 39-40, 66 (also Cohen (1991) 193), this cannot be a *probolê*, as *probolai* resulted in a vote of censure, not in actual penalties, let alone death. See Section 3 below. The only charge that could lead to the death penalty in such actions was a *graphê hubreôs*. The status of the Pittalacus of Aeschin. 1.54-66 (who appears to have attempted but then renounced a *graphê hubreôs*) is too dubious to draw any conclusion from his case. Aeschines refers to him often as a public slave (or a slave of Hegesander, or a slave of the Salaminians), yet he seems to be able to bring *dikai* and is very vocal about the *hubris* to which had been subjected – his rights and prerogatives seem incompatible with those of a slave, and the orators often refer to ex-slaves (freedmen) as slaves. For these reasons, most scholars have argued that he was in fact a freedman. See for various positions e.g. Jacob (1928) 162; Todd (1993) 192-94; Harris (1995) 103; Cohen (2000) 131, 169; Fisher (2001) 190-91; (2004) 66-67; Hunter (2006); Ismard (2015) ch. 3 n. 58; Taylor (2015) 49-51.

<sup>3</sup> Cf. Morrow (1937) 218; Fisher (1995) 69-71. This is also the assumption made e.g. by Lanni (2016) 85-98, who believes that the prohibition on *hubris* against slaves was not enforced, but had an ‘expressive power’ that signalled a widely-adhered social norm, and thus conditioned behaviour towards slaves. Lanni is largely correct about the ‘expressive power’ of the norm and its effects on behaviour (see Section 4, below), but the evidence does not warrant the assumption that the law was never enforced (and note that we have limited evidence for the enforcement of the *hubris* law altogether, yet the evidence is enough to show that it was enforced). Cohen (2000) 120-21 argues on the other hand that the law was indeed commonly enforced in court for *hubris* committed against slaves.

<sup>4</sup> Looking at Todd’s list of public and private actions mentioned in our sources ((1993) 98-122), it is remarkable for how many of them we lack an attested example.

conceptualized, of social attitudes and dynamics across institutional and ‘extra-institutional’ spaces of the democratic *polis*, and of the place of *timê* in these attitudes and dynamics.

Why the law on *hubris* should include hybriistic behaviour against slaves is far from straightforward, and it was not straightforward even for the Athenians of the fourth century BCE. The two extant non-fragmentary mentions of this provision explicitly allow for the puzzlement that this procedure may cause to the average Athenian. Aeschin. 1.17 introduces his explanation of the rationale of the law with the words: ‘It may be that someone at first hearing might wonder why on earth this term, slaves, was added in the law of *hubris*’ (trans. modified from Carey); Dem. 21.48 addresses the judges with the words: ‘Listen, men of Athens, to how humane this law is: it states that not even slaves deserve to be the victims of *hubris*. Why is this, by the gods?’<sup>5</sup> and then proceeds to explore the puzzlement of the barbarians. As we shall see, this puzzlement stems from the fact that in Athens masters were legally allowed to do to their slaves virtually anything they wished, and even other Athenians had significant latitude in how they treated other people’s slaves (at least in certain circumstances). Within such a legal framework, justifying how one could be convicted of *hubris* against a slave required considerable intellectual effort, which forced the orators (and their audiences) to lay bare their conceptualization both of what *hubris* was and why it had to be banned from all social relations, and of the position of slaves in social relations from the point of view of the citizens acting within the formal institutions of the *polis*.

Understanding these conceptualisations and their relation to social reality is essential because, as Vlassopoulos has argued, formal and informal sites of collective association (‘free spaces’ in his formulation)<sup>6</sup> were ‘particularly important for the formation of political and social identities’, and these sites saw the constant mixing and interaction of citizens, metics and slaves.<sup>7</sup> Scholars have been stressing in recent years the pervasiveness of social networks and associations that cut across the legal statuses in the day-to-day (social and political) life of the *polis*.<sup>8</sup> Sobak, in a ground-breaking article, even shows that these sites of cross-status interaction (and the workshop in particular) contributed to the production of democratic knowledge, mobilized then in the institutions of the *polis*.<sup>9</sup> But while much of the work done has served to highlight the importance of these networks and associations, comparatively little attention has been paid to the quality of the social relations that these networks and associations involved – were they hierarchical or horizontal, violent or collaborative?<sup>10</sup> It is argued that in these social spaces legal status and the institutions of the *polis* simply did not matter,<sup>11</sup> and the (admittedly unstated) assumption seems to be that, by downplaying status distinctions based on the legal and political order, these spaces facilitated widespread horizontal, non-hierarchical social interactions between free and slaves. Sobak, for instance, repeatedly stresses that these sites created social capital across the board (although his main concern is not to investigate

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<sup>5</sup> Translations from Dem. 21 are (modified) from Harris (2008).

<sup>6</sup> Cf. Evans and Boyte (1992) 17 for this expression, which there refers, however, to places of resistance to the dominant culture (cf. Sobak (2015) 669 n. 3). For the problems with postulating for democratic Athens a popular culture opposed to that authorised by the formal institutions of the state see Canevaro (2017a).

<sup>7</sup> Vlassopoulos (2007) 51 and *passim*. See also Vlassopoulos (2016).

<sup>8</sup> See e.g. the essays in Taylor and Vlassopoulos (2015), and in particular the introduction, for the *status questionis*. See also Ismard (2010); Azoulay and Ismard (2018).

<sup>9</sup> Sobak (2015).

<sup>10</sup> One exception is Hermann (2006) *passim*; (2011) 56-63 on slavery in Athens. Hermann paints a rosy picture of slave/free interaction in Athens. He sees, however, no disconnect between the political/legal sphere and social reality in this area.

<sup>11</sup> Vlassopoulos (2007); (2009); (2016). Gottesman (2014) also drives too big a wedge between ‘institutional’ and ‘extra-institutional’ spaces, which he identifies as ‘the street’; see Canevaro (2017c) for a critical discussion of this study.

social interaction, but rather knowledge production),<sup>12</sup> and, despite arguing that informal and formal institutions were fundamentally aligned in the democratic system, he still believes that the legal order was more or less irrelevant to the workings of these sites, that ‘opinions and knowledge were generated *prior to and outside of* the formal structures of governance’.<sup>13</sup> Vlassopoulos sensibly warns us that we cannot assume that legal distinctions and legal discourse and ideology simply reflect social reality – they are constructs and need to be investigated and explained as such.<sup>14</sup>

Within this scholarly landscape, the issue of the *graphê hubreôs* against slaves stands at the crossroads of several preoccupations: first, it is evidence of the legal institutions actively meddling in (and even facilitating) those cross-status social interactions recognized as central to the ‘free spaces’ of Athenian society; second, the discussions of this provision in the orators are evidence of how these interactions were conceptualized at the level of the institutions (and ideology) of the Athenian *polis*; third, these discussions were addressed to popular courts composed of Athenian citizens (the majority of whom were non-elite, and even actually poor, citizens),<sup>15</sup> the very individuals that were the protagonists of many of those cross-status interactions, and therefore provide a commentary on how they conceptually reconciled their privileged status as citizens (and often slave-masters) with the pervasiveness of slave/free social interaction in ‘free spaces’. Section 2 of this essay surveys the various explanations advanced by scholars of the possibility of a *graphê hubreôs* against slaves, highlighting their weaknesses and pointing out their reliance on a problematic view of *hubris* as a zero-sum transaction that involves the simple transfer of *timê* from the victim to the perpetrator. Sections 3 and 4 argue against the suitability of this paradigm through an examination of social interactions that are described as characterized by *hubris* and liable to *graphê hubreôs*, with particular reference to the one extant speech for a *graphê hubreôs*, Demosthenes’ *Against Meidias*. Section 5, the concluding section, building on the previous discussion, argues that *hubris* against slaves was conceptualized as concerned with the disposition and moral obligations of the *hubristês*, with his honour, and did not imply any formal recognition of any claims of the slave. It also explores the implications of my findings for our understanding of Athenian social interactions involving citizens and slaves, and the role of the formal institutions of the *polis* in facilitating and yet circumscribing the implications of these interactions.

## **2. Views of *hubris*, the role of the *graphê hubreôs* and the economy of *timê***

The Athenian public charge for *hubris* is generally understood as aiming to protect the ‘rights’ and *timê* of the victim, according to the influential analysis of Fisher.<sup>16</sup> While scholars such as MacDowell, Dickie and Cairns have stressed the centrality of the disposition of the agent (rather than the effects on the victim) to the concept of *hubris*, this aspect has gone virtually

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<sup>12</sup> Sobak (2015) *passim*.

<sup>13</sup> Sobak (2015) 706 n. 72.

<sup>14</sup> Vlassopoulos (2016). He is, however, perhaps too ready to postulate irreconcilable opposition between legal and social spaces and conceptions – see Section 4 below.

<sup>15</sup> Jones (1957) 36-37, 124 argued that in the fourth century the judges were mainly middle-class; *contra* Markle (1985); Rhodes (1981) 691; Hansen (1991) 185-86; Todd (1990). Todd’s discussion is the most detailed, but his conclusion that the courts were representative of a distinctive class of farmers, with their own values, that constituted the majority of the Athenian population is dependent on an outdated picture of the social and economic composition of the Athenian population (*cf.* Harris (2002) and Lewis, Harris and Woolmer (2015) for the prominence of market exchange and horizontal work specialization, and Hansen (2006) 67-84, Ober (2015) 86-88 for the high level of urbanization). MacDowell (1995) 156-58 shows that, despite some exaggeration, the picture of the average judges provided in the *Wasps* as elderly, thoroughly destitute and dependent on the daily three obols for the survival of their families, is reliable.

<sup>16</sup> Fisher (1976-1979); (1992).

unnoticed in studies of Greek law and oratory and of Athenian democracy.<sup>17</sup> As the *graphê hubreôs* protected the *timê* of the victim (and therefore his rights, his prerogatives), it has been interpreted as central to the workings of the democratic system. In one of the most influential readings, advanced by Ober, the *graphê hubreôs* had the role of protecting the ‘democratic dignity’ of the Athenian citizens, connected to fundamental attributes rather than to performance, and by which all citizens enjoyed protection from humiliation and infantilization. As *timê* in democratic Athens was no longer the exclusive attribute of an aristocracy, but all citizens of the democratic state came to enjoy a significant amount of *timê* by virtue of their citizen status, the existence of a crime of *hubris* became a safeguard of these rights for all citizens. No one could humiliate and dishonour a citizen, as denying any citizen his dignity would have meant undermining the very value of citizenship. This is the reason why *hubris* was prosecuted through a public action, a *graphê*, even when the actual manifestation of the crime could very much look like a private kind of offence.<sup>18</sup>

This line of interpretation is very attractive, but is at first sight called into question by the fact that the law on *hubris* makes also *hubris* committed against slaves liable under the *graphê hubreôs*. This is problematic because, if the *hubris* sanctioned by the law consists, with Fisher, in ‘the committing of acts of intentional insult, of acts which deliberately inflict shame and dishonour on others’,<sup>19</sup> then sanctioning *hubris* against someone requires an implicit recognition of his claims to *timê*. If the law envisages *hubris* committed against a slave – the denying of the slave’s *timê* to increase one’s own – then the slave must have some *timê* to begin with, with the rights and prerogatives that come with it, which should not be ignored. In other words, if *hubris* has to do with treating others as if they were of lesser status, then the possibility of *hubris* against slaves implies that there could be a lesser status than that of a slave. Even worse, because *hubris* is sometimes defined as treating others as if they were slaves (e.g. Dem. 21.180), the implication seems to be that treating slaves like slaves could be considered hybriotic.<sup>20</sup>

This problem has been recognized in scholarship, and various solutions have been proposed, with most interpretations falling roughly into two camps: those who believe that the *hubris* sanctioned by the law was not technically against the slave because the slave had no *timê* and those who conclude instead from the law that slaves were in fact recognized a modicum of *timê*. Orlando Patterson, for instance, in line with his hugely influential definition of slavery as the ‘permanent, violent domination of natively alienated and generally dishonoured persons’, considers the possibility of *hubris* against a slave absurd.<sup>21</sup> Fisher, on the other hand, concludes that ‘the *hubris*-law demanded that some attention be paid to the limited degree of humanity, honour’ of slaves. Ober similarly argues that the ‘extension of some legal protection to noncitizens points to how the recognition of dignity as a general attribute of persons might arise from active defense of civic dignity as a public good’. Along similar lines, Cohen believes

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<sup>17</sup> MacDowell (1976); Dickie (1984); Cairns (1996). For studies of *hubris* as a legal offence see Section 3. The exception is of course MacDowell (1990) 18-22, who stresses the dispositional aspect of *hubris* in the context of a discussion of the *graphê hubreôs*, but his influential commentary has been generally read through the lens of Fisher’s understanding of *hubris*, as will be clear from my discussion of general interpretations of the *graphê hubreôs*.

<sup>18</sup> Ober (1996) on Dem. 21, and (2012) on ‘democratic dignity’. See also e.g. Ruschenbusch (1965); Murray (1990); Fisher (1992) 36-85; Van Wees (2011) on the origins and aims of this public charge.

<sup>19</sup> Fisher (1992) 148.

<sup>20</sup> I paraphrase here the concise and very effective formulation of the problem offered by Fisher (1995) 45.

<sup>21</sup> Patterson (1985) 86-88. On this definition and its problems see Lewis (2017). Gernet (1917) 183-97 also argued against the possibility of the honour of a slave and proposed an idiosyncratic reading of *hubris* to avoid this problem. For a discussion of Gernet’s conception of *hubris* vis-à-vis Fisher’s, see Demont (2006).

that the law on *hubris* protected slaves from all kinds of abuse, and Morrow that it allowed third parties to prosecute masters for mistreating their slaves.<sup>22</sup>

Other scholars, such as Harris and Lewis, however, have rightly noted that it is hard to believe that the Athenians may have recognized even a modicum of ‘dignity’, ‘rights’ or *timê* applying absolutely to slaves, given the extensive powers masters had to punish (and maltreat) their slaves. Athenian writers liberally advised using beatings and violence to control and discipline slaves (e.g. Xen. *Oec.* 3.4, 9.15), and we have plenty of attestations of brutal treatment of slaves (e.g. Pl. *Leg.* 6.777d-e; 777a).<sup>23</sup> There were virtually no legal restrictions on the masters’ rights to mistreat their slaves.<sup>24</sup> All manners of corporal punishments were allowed,<sup>25</sup> and speakers in the lawcourts made no attempt to conceal their violence against slaves.<sup>26</sup> Sexual abuse of female slaves was also both within the master’s prerogatives and perfectly acceptable.<sup>27</sup> Even killing one’s slave incurred only low-level pollution, which could be washed away by privately performed purificatory rituals, and no legal consequences.<sup>28</sup> The unlimited prerogatives given to masters by the law seem incompatible with any legal recognition of a slave’s absolute claims to *timê*.<sup>29</sup>

Because they recognize the master’s wide prerogatives, some scholars conclude that a master could not commit *hubris* against his slave, and that therefore the *graphê hubreôs* must have sanctioned only *hubris* committed against other people’s slaves. It is certainly a reasonable point that proving *hubris* committed by masters against their slaves must have been exceptionally hard, and therefore the procedure is unlikely to have been used in this way often, or perhaps at all (although one can perhaps imagine some hypothetical scenarios, see Section 4 below). But the corollary of this reconstruction is normally that the law did not then protect the *timê* of the slave *per se*, but rather that of the master, or, as argued recently by Dmitriev, had the aim of protecting the master’s household (*oikia*). Strictly speaking, therefore, the victim of *hubris* was the master of the slave, who had his honour damaged by proxy by the act of *hubris* against his slave (as a member of his *oikia*), and not the slave.<sup>30</sup> A potential parallel for these dynamics would be Lys. 1.4, 25, where Euphiletus states that Eratosthenes’ seduction of his wife was *hubris* towards himself, his children and his house – they were victims, as it were, by proxy.<sup>31</sup> But there are problems with this parallel and with this interpretation. First, while in this interpretation the slave is not directly the victim of *hubris*, Euphiletus does not deny that the wife is also directly the victim of *hubris*: at Lys. 1.16 he reports the words of the mysterious

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<sup>22</sup> Fisher (1995) 75; Ober (2012) 843; Cohen (2000) 160-67; (1998) 116 n. 62; Morrow (1937). See also Lanni (2016) 86-98, whose position is very much in line with Fisher’s and Ober’s, and who believes that the law does imply that the slaves had a modicum of honour (Lanni (2016) 88-89). She, on the other hand, acknowledges that Aeschin. 1.17 and Dem. 21.46 do not explain the norm as aimed at protecting the slaves (on these passages see Section 4 below), and ultimately reads the law on *hubris* as protecting the democracy, that is the ‘democratic dignity’ of citizens. It should be noted that Cohen and Morrow postulate a much higher level of protection for slaves than Fisher, Ober and Lanni allow for.

<sup>23</sup> When Xen. *Hell.* 5.3.7 states that a master should not punish a slave out of anger, this is in the context of advice for the successful management of slaves, not a commentary on legal rules.

<sup>24</sup> See in particular Harris (2006) 271-79 and the full discussion in Lewis (2018) 39-48.

<sup>25</sup> Hunter (1994) 165-73; Lévy (1974) 39-41 and Konstan (2013) on violence against slaves in comedy.

<sup>26</sup> E.g. Lys. 1.18-22 (cf. Xen. *Mem.* 2.1.16; Arist. *Rhet.* 1380a14-24) with Lewis (2018) 41.

<sup>27</sup> E.g. Lys. 1.12, Ar. *Pax* 573, 1138; *Ach.* 273, Xen. *Oec.* 10.12, Hyp. *Ath.* 24 with Lewis (2018) 41-2.

<sup>28</sup> Ant. 6.4 (cf. Isoc. 12.181, Pl. *Leg.* 9.868a) with Harris (2006) 261-62; (2008) 103 n. 92 and Lewis (2018) 42. For a modern parallel for such an arrangement see Paton (2001) 926, cited in Section 4 below.

<sup>29</sup> With ‘absolute’, I mean claims to *timê* that apply irrespective of the context, and are therefore institutionally recognised by the *polis* and its laws. See Section 4 below for context-specific claims to *timê*.

<sup>30</sup> E.g. Harrison (1968) 172; Mactoux (1988) 336-38; Harris (2008) 103. Cf. Murray (1990) 144-45. An example of this dynamic would be the treatment of the speaker’s and his associates’ slaves by Conon and his gang at Dem. 54.4. See recently Dmitriev (2016) for the focus on the *oikia*.

<sup>31</sup> Fisher (1995) 64-65. On this case see Harris (2006) 297-332.

informant: ὁ γὰρ ἀνὴρ ὁ ὑβρίζων εἰς σὲ καὶ τὴν σὴν γυναῖκα ἐχθρὸς ὢν ἡμῖν τυγχάνει ('for the man who is behaving with *hubris* towards you and your wife is actually our enemy').<sup>32</sup> Second, all the paraphrases of the law state explicitly that the *hubris* punished was against the slave (Dem. 21.47-9; Aeschin. 1.17; Hyp. fr. 120; Lyc. 10-11.2), not against the master, whereas Euphiletus equally explicitly states that the *hubris* was also against himself, his children and his house. Third, none of the explanations that the orators offer of the provision banning *hubris* against slaves (even when they are trying very hard to deny that the law accorded the slave any claim to *timê*) argue that the point was to protect the master – this is not how the law was interpreted (see Section 4 below). Fourth, in order for the master's honour to be damaged 'by proxy' by abuse and insults against one of his slaves, we need to postulate a very high degree of dependence of his *timê* on the social life and even the behaviour of the slave, one that is very unlikely to have been acceptable to the Athenians or recognized by their laws. The relationship between a male's honour and the sexual honour of his free female dependants is, on the other hand, widely recognized by scholarship as one of the most salient features of so-called 'honour societies' – this is why seducing Euphiletus' wife was *hubris* also against Euphiletus. Ultimately, the law is quite explicit: the prohibition is on *hubris* against a slave, *per se*.

All these attempts to solve the impasse of the prohibition on *hubris* against slaves have in common an underlying understanding that 'honour was a scarce non-material commodity, pursued mainly by men in small-scale, face-to-face communities in more or less aggressive forms of zero-sum competition'.<sup>33</sup> On this view, a hybriatic act dishonours the victim and transfers *timê* from the victim to the perpetrator, i.e. the one's loss is the other's gain. In some cases this understanding is explicit (e.g. Ober, Cohen), in others only implicit, but still easily detectable (Mactoux, Patterson).<sup>34</sup> Fisher's model is in this respect more sophisticated and yet it ultimately fails to challenge this zero-sum understanding of honour: on the one hand, Fisher acknowledges *timê*'s connection with issues of justice and that dishonouring others can in some cases be dishonourable for the perpetrator; on the other, his focus on the dishonouring act, on the transaction between victim and perpetrator and on its effects on the victim perpetuates a notion of honour as a commodity that is acquired by taking it away from (dishonouring) someone else – this is why, to account for the possibility of *hubris* against slaves, he needs to conclude that slaves possess a limited amount of *timê*.<sup>35</sup> If *timê*, that which is infringed (and 'transferred' from the victim to the perpetrator) in cases of *hubris*, is a (scarce, non-material) commodity, then, in order for *hubris* to occur, the victim needs to have some *timê* to start with. Thus, if the law contemplates *hubris* against slaves, then either slaves are accorded some *timê*, or *hubris* must in reality be directed against someone else.

Several recent studies of the workings of honour in various societies have, however, shown that this picture of honour as a zero-sum game is misguided.<sup>36</sup> Honour – that is, intended as including both aspects of the interplay of demeanour and deference studied by Erving Goffman

<sup>32</sup> Lanni (2016) 92-93 also notes that in cases involving *hetairai* and entertainers at *symposia* hybriatic behaviour damaged the honour both of the slave and of the master.

<sup>33</sup> The formulation represents the view assailed by Cairns (2011) 23. For some notable examples of this understanding of honour see Peristiany (1965); Bourdieu (1965); Gilmore (1987); Walcot (1970); Miller (1990) 29-34; Bowman (2006). This approach finds its origin in Benedict's (1964) hugely influential study of Japanese culture and is reflected, in Greek studies, most notably in Dodds (1951), Finley (1954) and more recently in works such as Apfel (2011) e.g. pp. 216-17, 219, 223, 229, 231, 241, 243. Horden and Purcell (2000) identify a discrete Mediterranean cultural area characterised precisely by such notions of honour and shame.

<sup>34</sup> Cf. Cairns (1996) 32 n. 150.

<sup>35</sup> Cairns (1994) brings this tension in Fisher's approach to the fore.

<sup>36</sup> A parallel for these recent challenges to zero-sum views of honour can be found in the study of homoerotic relationships in Greek society: despite some problems with his approach, Davidson (2007) challenges an understanding of homoerotic relationships as a zero-sum game between penetrator and penetrated.

as central to social interaction<sup>37</sup> – is not attained or lost by dishonouring others or being dishonoured by others. As Appiah has shown, social actors in all societies retain their honour by abiding by specific honour codes, and therefore by behaving and treating others in socially acceptable ways, according to their rank, their specific dignity and their own sense of honour (as long as this is legitimate).<sup>38</sup> Honour codes are variable among cultures, yet whether we are talking about 19<sup>th</sup>-century China, modern Pakistan, Homeric society or early-modern Britain, it appears that honour codes have in common the aim of securing a certain level of social harmony, or at least of reducing social strife, by regulating social relations. In no society does honour create a *bellum omnium contra omnes*, and when such a situation occurs, it represents the breakdown of the system, rather than its natural outcome. The respect of others and one's own self-respect (because the honour code must be internalized to be binding) depend on performing socially to a certain standard and abiding by certain rules of behaviour. As a rule, anti-social behaviour is dishonourable. To give only two examples of recent historical scholarship that has made these points forcefully,<sup>39</sup> one could look at Cairns', Van Wees' and Scodel's work on Homeric society and at Linda Pollock's on early-modern British aristocracy.<sup>40</sup> Pollock downplays the role of violence in early-modern English honour codes, and argues instead that they in fact promoted stability. She shifts the focus from the study of outbursts of violence to the workings and negotiation of honour in day-to-day situations, and shows how honour typically concerned peacekeeping and social harmony. In her words, 'Honor could be an unsettling force, but for the most part it enhanced social cohesiveness and communality. Honor gave an individual dignity and worth, supplied a model for behavior, and provided a connection to others. [Honor] was part of an ethos of a communal society, which prescribed that all work together to help support the honor and reputation of those with whom one was connected ... An honourable name was not the individual's to maintain alone.' And moreover 'honor was not just a concept of entitlement. It was also one of obligation, mandating virtues such as hospitality, arbitration, and reconciliation ... Honorable men and women lived in charity with their friends, neighbors and family.' This picture is not unlike that painted by Douglas Cairns for the workings of honour in Homeric society: 'Homeric honour is neither unidimensional nor primitive. It involves complicated and multifaceted negotiations between individual claims and others' recognition and invokes the full range of norms and values by which Homeric society operates ... though Homer's heroes are proud and independent, their pursuit of honour implies a community with both the power to judge them and the ability to enlist individuals' honour in support of the security and cohesion of the group. Individual identity is intimately bound up with group membership.'<sup>41</sup>

In the next three sections I shall re-examine the *graphê hubreôs* to show that an understanding of this procedure, and of the concept of *hubris*, compatible with this framework can in fact accommodate the sanction of *hubris* against slaves without the complications recognized by much scholarship.

### 3. Hybristic conduct and disposition in the *graphê hubreôs*

Fisher's major (and fundamental) contribution to our understanding of *hubris* is the realization that *hubris*, as a social phenomenon, must be construed in terms of *timê*. The failure to

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<sup>37</sup> See Goffman (1967); cf. Van Wees (1992) 69–77.

<sup>38</sup> Appiah (2010). See also Stewart (1994); Krause (2002); Welsh (2008); Appiah (2010); Sessions (2010); Oprisko (2012); Cunningham (2013); Rabbås (2015).

<sup>39</sup> But see also e.g. Kane (2009); Baker (2013) 35–76.

<sup>40</sup> Cairns (1993); (2011); van Wees (1992) 69–77; Scodel (2008) 1–32; Pollock (2007).

<sup>41</sup> Cairns (2011) 38.



recognize this fact is the great weakness of MacDowell's interpretation of the concept.<sup>42</sup> By focusing his interpretation on the act itself and the intentional dishonour caused to the victim, however, Fisher ends up implicitly reiterating a picture of honour as a (scarce, non-material) commodity pursued through zero-sum competition between two actors, which involves the transfer, through acts of dishonouring, of *timê* from the victim to the *hubristês*. This picture of the workings of *timê* is, as we have seen, unsatisfactory. In an important contribution, Cairns has shown, moreover, that Fisher's definition fails to explain many instances of *hubris* attested in the sources.<sup>43</sup>

I shall repeat here Cairns' analysis of only one relevant example, which illustrates the problem. At Dem. 36.42, in a trial against Phormio, the speaker argues that if the judges side with Apollodorus and hand over to him the sums he is claiming, they will see Phormio in extreme need, while Apollodorus will behave with *hubris* and spend lavishly on his vices. Fisher tries to argue that Apollodorus' lavish spending after his victory would constitute *hubris* in that it would be a deliberate slap in the face for Phormio, reduced to poverty. And yet, as observed by Cairns, it is difficult to construe this situation as focusing on the deliberate dishonouring of Phormio. The focus is on Apollodorus' conduct, disposition, self-absorption, which can result in ignoring others' claims to *timê*, but whose purpose is not explicitly to ignore them. Apollodorus' behaviour is defined as hybriatic in the absence of a specific and explicit victim that he dishonours with intent. All that seems to be necessary to qualify his behaviour as hybriatic is excessive self-assertion (and overvaluation of his claim to *timê*), and the presence of an audience (the judges/Athenians in this case) being witness to it and considering his behaviour dishonourable.<sup>44</sup> Cairns finds several such cases and concludes convincingly that *hubris* is '[e]xpressing one's excess energy self-indulgently ... placing oneself and one's pleasure first, and thus losing sight of one's status as one among others'. Thus, although 'self-aggrandizement constitutes an incursion into the sphere of others' honour, because the concept of honour is necessarily comparative', the concept of *hubris* 'can accommodate purely dispositional, apparently victimless forms of self-assertion'.<sup>45</sup>

The priority of the disposition over the act in the concept of *hubris* is the key to understanding how the Athenians conceptualized *hubris* against slaves, but applying it to the judicial sphere poses distinctive challenges. Athenian charges originated from specific acts and therefore necessitated a victim – 'victimless' *hubris* would have hardly been liable to a *graphê hubreôs*.<sup>46</sup> And, in fact, all attested cases of actual or potential *graphai hubreôs* involve specific acts and victims: the striking of magistrates (an *archôn* and a *proedros*) in the course of their duties (Dem. 21.36); the striking by Taureas of the fellow-*chorêgos* Alcibiades (Dem. 21.147; [Andoc.] 4.20); Ctesicles hitting his enemy with a horse-whip during the festival procession (Dem. 21.180); the treatment of the Rhodian lyre-player by Themistius mentioned in Section 1 (Dein. 1.23); the accuser of Dem. 54 being beaten up by Conon and his gang; the accuser of Isoc. 20 being beaten up by Lochites; the trierarch punched by Theophemus ([Dem.] 47.38-45); the hoped-for (but not realized) imprisonment and beating up of the free boy sent into Apollodorus' rose-garden ([Dem.] 53.16); the imprisonment of a free boy from Pellene by Menon (Dein. 1.23); even the insults by Philocleon to a man at Ar. *Ves.* 1417-41.<sup>47</sup> But what

<sup>42</sup> MacDowell (1976); (1990) 18-22. See also Dickie (1984).

<sup>43</sup> Cairns (1996).

<sup>44</sup> Cairns (1996) 9. *Contra* Fisher (1992) 113.

<sup>45</sup> Cairns (1996) 32.

<sup>46</sup> Cairns (1996) 6 n. 32 also notes that Aristotle's focus, in the *Rhetoric*, on the act and the victim is due to the judicial context of his discussions of *hubris*. See also MacDowell (1990) 20.

<sup>47</sup> For the list and discussion of these cases see Fisher (1992) 38-43. Note, however, that Fisher misinterprets, with MacDowell, the scope of the *probolê*, and therefore reads as possible *probolai* cases that must have probably been *graphai hubreôs*. See Section 3 below.

exactly was the accuser meant to prove? That the act(s) under discussion had been committed intentionally and had caused dishonour to the victim, in accordance with Fisher’s definition of *hubris* as ‘the committing of acts of intentional insult, of acts which deliberately inflict shame and dishonour on others’?<sup>48</sup> Or rather, in accordance with Cairns’ definition, that that the acts resulted from a hybriistic disposition and were judged by their audience to be dishonourable,<sup>49</sup> regardless of whether the specific victim had actually lost any *timê*?

I propose to investigate this problem through an analysis of the arguments of Demosthenes’ *Against Meidias*. I take this to be the only extant speech written for a *graphê hubreôs*. Some scholars, following MacDowell, have interpreted it as a case of *probolê*, but this results from a misinterpretation of the scope of *probolê*. Harris has argued in several places that this is a *graphê hubreôs* and in a forthcoming paper reviews the evidence systematically to show not only the nature of the charge, but the relevance of the arguments to a charge of *hubris*.<sup>50</sup> Demosthenes deals with Meidias’ specific acts, for which the *graphê hubreôs* was brought, in the first part of the speech (1-76): here he describes in detail the behaviour of Meidias towards him, in his quality as *choregos* at the Dionysia, and why these ways of behaving qualify as *hubris*, giving also reasons for his choice of legal procedure. At 77-127 he adds a discussion of previous acts committed by Meidias against Demosthenes, instances of his *hubris*. At 128-42 he supplements these with a discussion of Meidias’ *hubris* against others, completing the picture of Meidias as a *hubristês*. The following paragraphs (143-74) deal with the second stage of the trial, the *timêsis*, and argue against Meidias’ plea for mercy, made on the basis of his public record, in the decision over the penalty. The epilogue (175-227) covers various topics, often returning to points made beforehand (e.g. Meidias’ contempt for the people at 193-204 and the fact that the laws are the best protection against the *hubris* of the powerful at 219-25).<sup>51</sup> It is important to trace what exactly Demosthenes is trying to prove throughout the speech.

The first and perhaps most important indication of his argumentative priorities, which defines what the speech is about, is in the first sentence: ‘The violence (*aselgeia*), judges, and the *hubris*, of which Meidias always makes use in his dealings with everyone, I think is well known to all of you and to the other citizens.’ The prominent position of the two terms, *aselgeia* and *hubris*, marks the centrality of the dispositions they identify.<sup>52</sup> They are not acts, but attributes, of which Meidias makes use in his dealings with everyone, as stated in the following relative clause (ἡ πρὸς ἅπαντας ἀεὶ χρεῖται Μειδίας). The topic is *hubris* as a disposition of Meidias, manifested in his actions towards everyone. The other element here highlighted is that the judges, as Athenian citizens, are the audience of Meidias’ *hubris* – his conduct is *hubris* because it has been identified as such by the community. Only once Meidias’ *hubris* is established as a disposition recognized by all does Demosthenes introduce himself, in the

<sup>48</sup> Fisher (1992) 148.

<sup>49</sup> Cairns (1993, 15-18 and *passim*; 2011, 30) stresses, in his discussion of *aidôs*, that the audience could be an actual audience as well as a fully internalized (eidetic) audience, as imagined by the actor. This is clearly correct. In the case of a charge of *hubris*, on the other hand, the relevant audience is always an actual audience: the Athenians, and more specifically the judges in the lawcourt as the representatives of the Athenians more widely, adjudicate on whether the agent’s act discredits the agent or the patient.

<sup>50</sup> Harris (1989); (1992); (2008) 79-81; (forthcoming). *Contra* MacDowell (1990) 13-23; (2009) 247, 252, followed by Fisher (1992) 36-85; Rowe (1995); Martin (2009) 15-48 (at p. 48 he claims the charge is *asebeia*); Worthington (2012) 158-62; Scullion (2012) 222-31; Eidinow (2015) 74-75. In any case, even if we were to accept that the charge was, in its entirety, a *probolê* brought for offences committed during the festival, it is clear that Demosthenes argues in the speech that these offences constitute *hubris* and could be prosecuted through a *graphê hubreôs* – my argument in the following does not depend specifically on the kind of charge brought, but rather on the conceptualization of *hubris* as a legal offence punishable in court.

<sup>51</sup> For a discussion of the structure of the speech and the relevance of the arguments see Harris 2008: 82-4. See also MacDowell (1990) 28-37, who, however, considers many of the arguments irrelevant to the charge because he believes the charge to be a *probolê*.

<sup>52</sup> *Aselgeia* is normally a general attribute of the subject and not a specific act: *cf.* Dem. 4.9.

second sentence, as the victim of one manifestation of Meidias' *hubris* (ἐγὼ δ' ... ὑβρισθεὶς), the reason why he is bringing the charge. Of the elements that characterize Meidias as guilty of *hubris*, Demosthenes prioritizes his hybriistic disposition, the fact that this disposition manifests itself all the time in all his social interactions (and at 4 the aim of the charge is that Meidias should no longer be able to behave with *hubris* without fear) and that the Athenian citizens as the audience of his behaviour already consider it *hubris* (this is strengthened by the vivid description at 2 of the Athenians' rage against Meidias at the *probolê* in the Assembly, cf. 6; and at 4 by the mention of the widespread support for Demosthenes' charge against him).

The specific actions against Demosthenes (the blow etc.) are cited as the reasons why Demosthenes charged Meidias, not as the reasons for Meidias' guilt. Meidias' disposition, apparent in all occasions against everyone, is stressed again at 7: Demosthenes asks the judges to cast their vote in his favour ('to help me as well as yourself') 'if I prove that Meidias here has behaved with *hubris* not only towards me but also towards you, the laws and everyone else'. The arrangement of the sentence suggests that what Demosthenes needs to prove to win the trial, by his own admission, is not only that he was the victim of acts of *hubris*, but that Meidias was more generally hybriistic in all of his social and political dealings. He then summarizes the situation from which the trial originated as follows: 'This is roughly how matters stand, men of Athens: in the past I have been subjected to *hubris*, and my person to physical abuse.' But he immediately clarifies that this is not what the judges need to vote about: 'But the issue that is about to be decided is whether or not someone should be allowed to behave with *hubris* with impunity towards anyone whom he encounters.' The two clauses are connected by μὲν... δέ, marking an opposition between 'the situation' (οὕτω πως ἔχει: the actions against Demosthenes) and the issue to be decided (τὸ πρᾶγμα νυνί: Meidias' *hubris* as manifested in his general conduct). This is confirmed by the next sentence at 8, where Demosthenes asserts (against Meidias' protestations, cf. 25-41) that the trial is not about a private matter, but about whether such behaviour is more generally acceptable (this point is expanded upon at 25-76). The focus in these key introductory paragraphs is not on Demosthenes as victim, and there is no mention of his dishonour, which, in Fisher's reading, should be central to the charge.

After discussing his use of *probolê* at 8-12, Demosthenes turns to a long discussion of Meidias' actions as manifestation of his *hubris*. First he deals with his actions in connection with the Dionysia (12-18), showing that the blow was not an isolated occurrence, but consistent with his previous behaviour towards Demosthenes acting as chorus producer. Demosthenes stresses at 15 that what makes the individual actions of Meidias against himself actionable through a *graphê hubreôs* (i.e. formally hybriistic) is not his own reaction to or his own assessment of them, however much anger (or humiliation) he may have felt, but the assessment of the audience of the Athenians. He therefore promises to discuss with the judges 'actions that will make all of you [the judges] equally angry'. The description of these actions (16-18) is punctuated by claims that the Athenians, as bystanders and at the *probolê* in the Assembly, are already convinced that they are manifestations of *hubris*.

The rest of the argument is anticipated at 19-24: Demosthenes will go through all the other instances of *hubris* in Meidias' behaviour, to show that his actions at the Dionysia are manifestations of a more general disposition and conduct. At 21 Demosthenes states that the judges need to punish Meidias for all of these actions, and anticipates that he will discuss them concentrating first on his hybriistic behaviour towards himself and then on that towards other Athenians. The topic is here admittedly a series of individual acts, but presented from the point of view of Meidias' behaviour, inasmuch as they are manifestations of a disposition. The victims of the actions of Meidias (23: ὑβρεῖς αὐτοῦ) are cited here not to stress their dishonour and humiliation, but as evidence of the actions. Even the word *atimia*, in the plural (ἀτιμίας), qualified, like ὑβρεῖς, by αὐτοῦ (Meidias'), is used in a way that stresses not the status of the

victims as a result of Meidias' actions, but Meidias' disrespectful behaviour, which fails to respect the *timê* they lay claim to.<sup>53</sup> As *timê* can refer in Greek both to one's worth and status and to the external recognition of this worth and status by others (their respect or the markers of this respect), *atimia* can refer both to one's lack of honour as worth, status and prerogatives, and to actions and behaviour by others that deny one's worth and status. We should not assume that the external lack of respect for one's claims to *timê* automatically corresponds to actual lack of *timê* as worth.<sup>54</sup> Here the use of *atimiai* (like the use of ὑβρεῖς) focuses on Meidias' behaviour (as clarified by αὐτοῦ), but does not comment on its effects.

Demosthenes fulfils the promises made in these paragraphs at 77-127, where he discusses various instances of Meidias' *hubris* that involved himself, and at 128-42, where he moves to *hubris* that involved others. I shall give a few examples of how Demosthenes goes through these actions focusing on them as evidence of Meidias' disposition. At 77 he states that his actions would be understandable (and therefore not hybristic) if they were intended as repayment (retaliation) for something that happened in the past.<sup>55</sup> But Demosthenes intends to show that Meidias' behaviour towards him has always been hybristic – it does not stem from particular motives, but from his hybristic disposition (cf. 109). And, once again, he stresses that Meidias' actions (in the context of Demosthenes' suits against his guardians) are well known to the Athenians, had a wide audience at the time and were already deemed by the Athenians to be hybristic (80). The impression of Meidias' hybristic disposition is reinforced by tales of him ignoring the laws and court judgements against him, and behaving with *hubris* not only against Demosthenes but also against his entire tribe (81, 108). His *hubris* is connected to his wealth and high social standing (98, 100, 109, 123, 138, 185), in accordance with common beliefs about the causes of a hybristic disposition.<sup>56</sup> His wealth and standing make him believe he is superior to everyone else, above the laws (112-13), they lead him therefore to overestimate his claim to *timê* and therefore his prerogatives *vis à vis* others, the laws and the *polis*. The picture of his disposition is reinforced through discussion of his sacrilegious behaviour and his shamelessness (104-05, 109, 119-20). Demosthenes stresses repeatedly that Meidias' behaviour should cause (and has caused) the anger of all Athenians, a clear mark of *hubris* (108). At 114 he describes the implications of his narrative of Meidias' actions in terms of the disposition they manifest: 'This man is so impious, so foul, so ready to stoop to say or do anything—whether it be true or false, against an enemy or a friend, and so on, he makes no distinction at all ...' And at 115, after showing that it was not out of any actual motive or

<sup>53</sup> For the word order, cf. Dem. 18.50: αἴτιος δ' οὗτος, ὥσπερ ἐωλοκρασίαν τινά μου τῆς πονηρίας τῆς ἑαυτοῦ καὶ τῶν ἀδικημάτων κατασχεδάσας; 18.252: τὴν ἀγνωμοσύνην αὐτοῦ καὶ τὴν βασκανίαν; Thuc. 2.13.1: τοὺς δὲ ἀγροὺς τοὺς ἑαυτοῦ καὶ οἰκίας; Plut. Mar. 31.3: τὴν δύναμιν αὐτοῦ καὶ τὴν δόξαν οἰόμενος; 34.6: τὴν φιλοτιμίαν αὐτοῦ καὶ τὰς ἀμίλλας.

<sup>54</sup> See Van Wees (1992) 69–77; Cairns (2011) 29–30 and *passim*; Rabbås (2015) 632–34; Canevaro (2013) 187–88 on the semantic range of *timê*. That *atimia* also includes both aspects is shown by passages such as Eur. *Her.* 72: the expression θεῶν ἀτιμία cannot refer to an actual loss of status of the gods as a result of the mortals' behaviour, but rather to the mortals' lack of respect for the gods' claims to *timê*. Other passages use *atimia* primarily in reference to external recognition (or markers of recognition), with no automatic reference to internal worth or actual status (the loss of status and worth could be a consequence, but is not flagged up as an automatic consequence): e.g. Arist. *Rhet.* 1374a 23, where ἀτιμίαι are mentioned alongside ὀνειδίη καὶ ἔπαινοι ... καὶ τιμαὶ καὶ δωρεαί, all forms of external recognition (notice that Aristotle does not normally use *timê* to signify one's worth or status, only the external recognition of this worth: see Rabbås (2015) 632–34). In most instances, the two aspects of *atimia* are naturally aligned: the lack of respect for one's claims to *timê* corresponds to one's actual dishonour. But the purpose of an accusation of *hubris*, from the point of view of the victim, is precisely to deny any alignment between the perpetrator's lack of respect and the victim's actual status, see this section, below.

<sup>55</sup> Cf. Arist. *Rhet.* 1378b 25–26: οἱ γὰρ ἀντιποιοῦντες οὐχ ὑβρίζουσιν ἀλλὰ τιμωροῦνται.

<sup>56</sup> See Dover (1974) 110–11; MacDowell (1976) 16–17; Fisher (1992) 19–21, 48–50, 69–72, 296–97, 349–52, 421–22 for the connection between *hubris* and wealth, youth and over-confidence. See e.g. Arist. *Rhet.* 1383a 1–3; 1385b 19–23; 1389a 13–16 and Eur. *Supp.* 726–30, 737–44; fr. 438 Kannicht; Xen. *Cyr.* 8.4.

conviction that Meidias tried to expel Demosthenes from the country, he concludes that he did it ‘out of *hubris*’ – *hubris*, as a disposition, is identified as the real cause of his behaviour. This point is further reinforced at 123, where Meidias’ plotting is described as an ἔθος, a habit (in turn linked again to his wealth) which is recurrent and must be resented with anger and indignation not only by the victim of the day, but by all the Athenians, because *hubris* manifests itself towards everyone, towards the laws, the god and the *polis* (126-27). The job of the Athenians is to sanction *hubris* when they see it, and publicly deter those that develop this disposition on account of their wealth (123). At 128 Demosthenes once again states that if such actions had been directed only against him, and Meidias’ general disposition had turned out to be that of a φιλόνητος, he would have considered them to be his misfortune – the *hubris* of the acts against him can only be ascertained as an episode of a general disposition, for the court to condemn Meidias of *hubris*. Paragraphs 128-40 have the declared purpose of showing that Meidias is hybristic in all of his dealings and social interactions, and 138 again summarizes his behaviour with reference to his disposition as a result of his wealth: ‘When a man’s evil and hybristic nature is supported by power and wealth, this acts as a bulwark protecting against sudden attack. Should he be stripped of his possessions, he would perhaps not behave with *hubris*.’

In the narrative of Meidias’ actions throughout his life and career, the focus is always on Meidias, on the coherence of his hybristic conduct and on the disposition of which this is a manifestation.<sup>57</sup> Demosthenes makes clear that these are the key elements that need proving to secure Meidias’ conviction in the *graphê hubreôs*. And, accordingly, the arguments that Demosthenes anticipates Meidias will use (25-41) are all about the fact that his actions are at best individual offences against Demosthenes, which Demosthenes should have prosecuted through private actions and not through a *graphê hubreôs*. These objections are not just procedural, they are substantive: by claiming that these are individual private offences, Meidias denies that they are the manifestation of a general disposition and therefore attempts to demonstrate that his behaviour does not qualify as *hubris*. Demosthenes’ counterargument starts with a strong statement that Meidias has clearly committed the acts of which he is accused ‘out of *hubris*’ (ἀλλὰ μὴν ὀπηνίκα καὶ πεποιηκῶς ἃ κατηγορῶ καὶ ὕβρει πεποιηκῶς φαίνεται). Meidias argues that he may have committed the actions of which he is accused, but there is no hybristic disposition involved. Demosthenes replies that the actions are clearly due to Meidias’ hybristic disposition. That is the clincher in a *graphê hubreôs*.

#### 4. The victim of *hubris* in the *graphê hubreôs*

What about the victims, then? What is the victims’ place in the argument that *hubris* has been committed? Demosthenes in the *Against Meidias* goes so far as to limit the importance of the victim and to claim that those who behave with *hubris* wrong the entire city, not just the victim – this is the reason why the *graphê hubreôs* is a public charge (45). In the next few paragraphs, in introducing the issue of *hubris* against slaves, he takes the victim altogether out of the equation (as we shall see in the section 5). Demosthenes hardly ever focuses on the emotions of the victims of *hubris* and on their dishonour as a result of Meidias’ *hubris* towards them. There are only three possible exceptions to this pattern, which need to be discussed. It will become clear that the relationship between *hubris* and the dishonour of the victim is not as straightforward as normally assumed.

The most important evidence for the effects of *hubris* on the victim is 72-74, in which Demosthenes narrates the story of Euaeon and Boeotus. Boeotus struck Euaeon at a dinner

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<sup>57</sup> MacDowell (1990) 21-22 saw this, but believed that all these arguments, relevant to a charge of *hubris*, were irrelevant to this particular charge, a *probolê* (pp. 30-1).

party with one single blow and Euaeon killed him in retaliation. These facts are narrated by Demosthenes, against Meidias' arguments that theirs is a private quarrel of little importance. Demosthenes wants to show that his lack of immediate retaliation to the blow in the theatre is not a sign that Meidias' actions were not serious, that people behaving with *hubris*, like Meidias, have incurred serious consequences in the past, and that Demosthenes is therefore not overreacting by bringing a *graphê hubreôs*. As a result, the focus is admittedly on the reaction of the victim of *hubris* and on his motivations. Fisher takes this passage to be clear evidence that *hubris* has primarily to do with the effects (the dishonour) that an action brings to the victim: 'it is the feeling of being shamed, dishonoured, humiliated that Demosthenes brings out'.<sup>58</sup> It is worth quoting the passage in full:<sup>59</sup>

Many people know Euaeon, the brother of Leodamas, who killed Boeotus at a banquet, a public gathering, because of a single blow. [72] It was not the blow that aroused his anger, but the *atimia*. Being beaten is not what is terrible for free men (although it is terrible), but being beaten out of *hubris*. A man who strikes may do many things, men of Athens, some of which the victim may not even be able to describe to someone else: the way he stands, the way he looks, his tone of voice, when he displays *hubris*, when he acts like an enemy, when he punches, when he strikes him in the face. When men are not used to being insulted, this is what stirs them up, this is what drives them to distraction. No one, men of Athens, could by reporting these actions convey to his audience their seriousness in the exact way that the *hubris* really and truly appears to the victim of the act and those who witness it. [73] Consider, by Zeus and the gods, men of Athens, think and calculate in your own mind how much more anger I was likely to have felt when Meidias did things like this than Euaeon did then, the man who killed Boeotus. He was struck by an acquaintance, and that man was drunk, in front of six or seven men, and those men were acquaintances who were going to blame one man for what he did and praise the other for holding back and restraining himself. Besides, this happened when he went to a house for dinner, a place where he did not have to go. [74] I, on the other hand, was subjected to *hubris* at the hands of an enemy who was sober, in the morning, acting out of *hubris* and not under the influence of wine, in front of many people, both foreigners and citizens, and this happened in a shrine where as a chorus leader, I was under a strong obligation to go. Because of good sense or rather good fortune, I think, men of Athens, I decided to hold back and not get carried away to do any irreparable damage; but I have much sympathy for Euaeon and all men if someone has been the victim of *atimia* and has come to his own rescue. (Dem. 21.71-74)<sup>60</sup>

There are two key features of this passage that complicate the picture drawn by Fisher. First, although it is clear that 72 focuses on the effects of *hubristic* behaviour on the victim (drawing a parallel with Demosthenes' lack of immediate reaction, but later choice of bringing a *graphê*

<sup>58</sup> Fisher (1992) 47-49. See also Harris (2008) 83, who also stresses the humiliation felt by Demosthenes.

<sup>59</sup> [71] ἴσασιν Εὐαίωνα πολλοὶ τὸν Λεωδάμαντος ἀδελφόν, ἀποκτείναντα Βοιωτὸν ἐν δεῖπνῳ καὶ συνόδῳ κοινῇ διὰ πληγὴν μίαν. [72] οὐ γὰρ ἡ πληγὴ παρέστησε τὴν ὀργήν, ἀλλ' ἡ ἀτιμία: οὐδὲ τὸ τύπτεσθαι τοῖς ἐλευθέροις ἐστὶ δεινόν, καίπερ ὄν δεινόν, ἀλλὰ τὸ ἐφ' ὕβρει. πολλὰ γὰρ ἂν ποιήσειεν ὀ τύπτων, ὧ ἄνδρες Ἀθηναῖοι, ὧν ὁ παθὼν ἐνὶ οὐδ' ἂν ἀπαγγεῖλαι δύναιθ' ἐτέρῳ, τῷ σχήματι, τῷ βλέμματι, τῇ φωνῇ, ὅταν ὡς ὑβρίζων, ὅταν ὡς ἐχθρὸς ὑπάρχων, ὅταν κονδύλοις, ὅταν ἐπὶ κόρρῃς. ταῦτα κινεῖ, ταῦτ' ἐξίστησιν ἀνθρώπους αὐτῶν, ἀήθεις ὄντας τοῦ προπηλακίζεσθαι. οὐδεὶς ἂν, ὧ ἄνδρες Ἀθηναῖοι, ταῦτ' ἀπαγγέλλον δύναιτο τὸ δεινὸν παραστήσαι τοῖς ἀκούουσιν οὕτως ὡς ἐπὶ τῆς ἀληθείας καὶ τοῦ πράγματος τῷ πάσχοντι καὶ τοῖς ὀρώσιν ἐναργῆς ἢ ὕβρις φαίνεται. [73] σκέψασθε δὴ πρὸς Διὸς καὶ θεῶν, ὧ ἄνδρες Ἀθηναῖοι, καὶ λογίσασθε παρ' ὑμῖν αὐτοῖς, ὅσῳ πλείον' ὀργὴν ἐμοὶ προσήκε παραστήναι πάσχοντι τοιαύθ' ὑπὸ Μειδίου ἢ τὸτ' ἐκείνῳ τῷ Εὐαίῳ τῷ τὸν Βοιωτὸν ἀποκτείναντι. ὁ μὲν γ' ὑπὸ γνωρίμου, καὶ τούτου μεθύοντος, ἐναντίον ἐξ ἢ ἔπ' ἀνθρώπων ἐπλήγη, καὶ τούτων γνωρίμων, οἱ τὸν μὲν κακίειν οἷς ἔπραξε, τὸν δ' ἐπαινέσεσθαι μετὰ ταῦτ' ἀνασχόμενον καὶ κατασχόνθ' ἑαυτὸν ἐμελλον, καὶ ταῦτ' εἰς οἰκίαν ἐλθὼν ἐπὶ δεῖπνον, οἱ μὴδὲ βαδίζειν ἐξῆν αὐτῷ. [74] ἐγὼ δ' ὑπ' ἐχθροῦ, νήφοντος, ἔωθεν, ὕβρει καὶ οὐκ οἴνω τοῦτο ποιοῦντος, ἐναντίον πολλῶν καὶ ξένων καὶ πολιτῶν ὑβριζόμεν, καὶ ταῦτ' ἐν ἱερῷ καὶ οἱ πολλῇ μοι ἦν ἀνάγκη βαδίζειν χορηγοῦντι. καὶ ἑμαυτὸν μὲν γ', ὧ ἄνδρες Ἀθηναῖοι, σωφτιμαζρόνως, μάλλον δ' εὐτυχῶς οἶμαι βεβουλεύσθαι, ἀνασχόμενον τότε καὶ οὐδὲν ἀνήκεστον ἐξαχθέντα πράξαι: τῷ δ' Εὐαίῳ καὶ πάσιν, εἴ τις αὐτῷ βεβοήθηκεν ἀτιμαζόμενος, πολλὴν συγγνώμην ἔχω.

<sup>60</sup> I avoid translating words stemming from *hubris* or *atimia* in order not to prejudge the interpretation of the passage.

*hubreôs*), the effect on the victim, according to the wording, is anger (τὴν ὀργήν), not ἀτιμία. ἀτιμία is rather the real cause (as opposed to the blow) of the anger of the victim. Thus, strictly speaking, this sentence does not identify ἀτιμία as the effect of *hubris* on the victim; it identifies ἀτιμία as the cause of the anger of the victim. It is Fisher's extrapolation that ἀτιμία is in turn one of the effects (the key effect) of *hubris* on the victim (rather than a feature of the *hubris* of the agent). As I observed in Section 3, at 23 of this speech *atimia* is matched to *hubris* to indicate the behaviour of the perpetrator (his lack of respect for the victim's claims to *timê*), but it does not necessarily imply a corresponding effect on the victim (his loss of status or *timê*). In fact, while in most cases the word *atimia* (used not in its legal sense) indicates, concurrently, both the external manifestations of disrespect for one's claims to *timê* and one's matching dishonour as loss of *timê*,<sup>61</sup> in cases of accusations of *hubris* the alignment between these two aspects is precisely what is denied by the accuser. The accuser argues that he has been the victim of *hubris* and therefore that his claims to *timê* have been disrespected (*atimia*), but does not admit to any actual dishonour as loss of status. For instance, when a victim, a free man, claims to have been treated as a slave by a *hubristês*, he is certainly not accepting that, as a result of this treatment, he has become a slave – quite the contrary! At 180 Demosthenes states that *hubris* is the reason for which Ctesicles, at a procession, struck an enemy with his whip, thus treating free men as if they were slaves. What the victim wanted to demonstrate by having this behaviour sanctioned as *hubris* was precisely the misalignment between how he had been treated (the lack of respect for his claims to *timê*) and his actual *timê* as worth or status. Likewise, when the enemies of Apollodorus sent a free boy to his rose-garden in the hope that Apollodorus, convinced that he was a slave, would maltreat him, triggering therefore a *graphê hubreôs* ([Dem.] 53.16), the key to the ploy was the misalignment between the boy's status and Apollodorus' treatment as if he were of inferior status. The ploy presupposed that Apollodorus' disrespectful treatment would not alter the boy's claim to respect – hence the *hubris*.<sup>62</sup>

There is therefore no reason for reading *atimia* at 72 as a direct reference to objective loss of *timê* by the victim, resulting from *hubris*, as Fisher does. The passage makes perfect sense in reference to Boeotus's behaviour: it was not Boeotus' blow that caused Euaeon's anger, but his lack of respect for his claims to *timê* (ἀτιμία). The parallelism built in the sentence in fact supports this interpretation, otherwise we need to postulate that the two subjects, ἡ πληγή and ἡ ἀτιμία, refer to different characters: the blow is Boeotus', but the ἀτιμία is Euaeon's. This is not impossible, but we need to recognize that, although the mention of ἀτιμία here is clearly meant to explain what is distinctive about acts of *hubris* (the next sentence reiterates that the blow is terrible for a free man only when struck out of *hubris*, thus connecting *atimia* with *hubris*), it does not necessarily follow that what is distinctive is the dishonour of the victim, and not the behaviour of the perpetrator.<sup>63</sup> This is further confirmed by 74, where Euaeon is described as victim of *atimia* with the verb ἀτιμαζόμενος – the (passive) verb is in the present, which focuses the description on the process of being the victim of disrespectful behaviour

<sup>61</sup> See Section 3 above.

<sup>62</sup> The paradigmatic case of this dynamic is the quarrel between Achilles and Agamemnon in the *Iliad*: Achilles laments that Agamemnon has disrespected him (Hom. *Il.* 1.356: ἠτίμησεν) and represents his behaviour as hybriatic (Hom. *Il.* 1.203, 214). When Achilles claims that Agamemnon treated him like a dishonoured vagrant (Hom. *Il.* 9.648: ὡς εἴ τιν' ἀτίμητον μετανάστην), he is not saying that as a result of Agamemnon's disrespectful behaviour (ἠτίμησεν) he has actually become a dishonoured vagrant (he claims in fact that his *timê* comes from Zeus, and he does not need the *timê* granted by the Achaeans, Hom. *Il.* 9.607-08). It is precisely because Achilles is most definitely not a dishonoured vagrant that Agamemnon's disrespect towards him qualifies as hybriatic. See Cairns (2001) 211-14 and (2011) 32-33 on this quarrel and the interplay of honour and communal norms.

<sup>63</sup> Cf. Ober (1996) 99-101, who, because he sees honour as a scarce non-material commodity pursued through a zero-sum competition between two actors, assumes that *atimia*, here and elsewhere, implies automatically loss of status for the victim of *hubris*.

(and therefore on the disrespectful behaviour of the perpetrator), rather than on the actual effects (in terms of *timê* and status) of this behaviour on the victim (this would have required an aorist). And the following sentences are in fact all about the behaviour and the attitude of the perpetrator: ‘the way he stands, the way he looks, his tone of voice ...’.<sup>64</sup> After describing this behaviour and attitude, Demosthenes reiterates that these are the causes of the victim’s anger (ταῦτα κινεῖ, ταῦτ’ ἐξίστησιν ἀνθρώπους αὐτῶν).

As in the rest of the speech, so in this passage the focus, when describing what constitutes *hubris*, is the attitude and the behaviour of the perpetrator, not the dishonour of the victim. And at the end of 72 we find the other key element to the identification of *hubris*, as we have described it in the previous section: the reaction of the audience, in this case the bystanders. The introduction of the audience leads us to the second complicating feature of the passage: that the action of Boeotus cannot in fact be unambiguously defined as *hubris*, or considered as an actual insult to Euaeon. Demosthenes pushes the parallel with Meidias’ action at 72, but at 73 introduces elements that suggest that Euaeon’s interpretation of the action as *hubris*, and therefore his reaction, were perhaps excessive: Boeotus was drunk and being drunk is often flagged up as a justification for inappropriate behaviour that does not, however, derive from a hybristic disposition. At 74 Demosthenes in fact opposes drunkenness, as a motivation, to *hubris*, and so he does at 180 (‘[Ctesicles] struck his enemy out of *hubris*, not because of the wine, and he took the procession and the drinking as his excuse and committed the offence, treating free men as slaves’). At 38 drunkenness (together with passion and ignorance) is the reason why the actions of the man who struck the *thesmotetês* were judged not to be hybristic. That Boeotus’ blow was not in fact believed by a majority of Athenians to derive from a hybristic disposition, and therefore did not justify the extreme anger of Euaeon (it was not that serious an insult), is also signalled by the fact that Euaeon was taken to court and sentenced to death for his reaction, even though by only one vote (75).<sup>65</sup>

This passage therefore does not show that the dishonour of the victim was central to the demonstration that *hubris* had been committed. First, there is no compelling reason to read in the description of the hybristic act and its effects any reference to actual dishonour or humiliation of the victim, as loss of *timê*, status or standing in the eyes of the audience; that is, the hybristic action did not diminish the victim’s standing in the eyes of the onlookers. Second, the case discussed by Demosthenes turns out not even to be an uncontroversial case of insulting behaviour, and had not been uncontroversially seen as such by the community as its audience, in court and outside.<sup>66</sup> We find similar problems with the lengthy description of Strato’s fate following his adjudication against Meidias, when Meidias failed to show up at an arbitration for a charge of slander brought by Demosthenes (3-101). This is not the place to reconstruct the series of legal proceedings that led to his fate, but there is no question that in this case, as a result of Meidias’ actions, Strato suffered actual dishonour, actualized by a lawcourt in a penalty of legal *atimia* (as disenfranchisement).<sup>67</sup> Thus, *atimia* in this instance is not just the perpetrator’s lack of respect for the victim’s claims to *timê*, but the victim’s humiliation and dishonour. This, however, does not make the connection between *hubris* and dishonour in this case any more straightforward. Demosthenes, in the context of his review of Meidias’ hybristic behaviour, repeatedly describes Meidias’ actions against Strato as hybristic, originating from

<sup>64</sup> MacDowell (1990) 21 saw this when he noted that ‘this passage stresses the effect of *hubris* on the victim, but it stresses even more the attitude of the attacker’.

<sup>65</sup> On this particular trial and the procedure and charge see Harris (1992) 78; (2008) 128.

<sup>66</sup> My interpretation here differs markedly from that offered in Ober (1996) 98-9, who sees this story (as well as that of Euthynus and Sophilus) as ‘a tale of justifiable revenge ... executed in order to redress the *atimia* associated with an act of *hubris*’.

<sup>67</sup> On *atimia* as a legal penalty in Classical Athens, see MacDowell (1978) 73-75; Vlemick (1981); Todd (1993) 116-18, 142-43; Kamen (2013) 71-78 (with further bibliography).



the same hybristic disposition which resulted in all of Meidias' other acts. What he obscures, however, is the other element of the equation (central to all of his other descriptions of hybristic acts): the judgement of the community of the Athenians. And the Athenians, acting in an institutional capacity, had clearly not considered at the time Meidias' accusations against Strato as hybristic, stemming from his inflated sense of his own *timê*, but rather as fully justified, as they had voted in Meidias' favour against Strato, and inflicted on Strato the penalty of *atimia*. Thus, from an institutional and legal point of view, Strato's dishonour (*atimia*) was not the result of Meidias' *hubris*. It was inflicted on him because Meidias was judged to be in the right. If the community of the Athenians, in their institutions, had deemed Meidias to be behaving hybristically, then Strato would not have become *atimos*.

This same dynamic is alluded to already at 6, when Demosthenes quickly acknowledges the ambiguity of the position of the victim of *hubris* who brings a charge against the *hubristês*: he claims that his condition resembles that of the defendant at a trial, because it is kind of a misfortune (τις συμφορά) to be the victim of *hubris* and not to receive justice for it. This statement can be better understood in the light of what has been observed so far. Because it is up to the audience (actual or not) of an act to decide whether the act stems from an unwarranted over-statement of one's worth and status (*timê*), and therefore is an act of *hubris*, if the audience (in such a case the judges in a lawcourt) were to decide that there is no *hubris*, this would equate to certifying that the *timê* the agent has arrogated to himself, and the effects of this on his behaviour (and therefore on others), are in fact appropriate. When the acts of *hubris* contested in court are towards a victim with significant status (*timê*, e.g. a citizen), such as Demosthenes, then the victim is indeed in a difficult position: were the judges, representing formally the community as the audience of the act of *hubris*, to decide that no *hubris* had been committed, their decision would 'formalize' and 'actualize' not only the expansive *timê* arrogated by Meidias, but also his disregard for Demosthenes's *timê*. His lack of respect for Demosthenes' claims to *timê* (*atimia* as the behaviour of the agent) would be formalized by the court as reflecting the actual *atimia* of Demosthenes (as actual lack of *timê* as worth). The paradox here is that, strictly speaking, where there is *atimia* as lack of worth, there is no actual lack of respect, and therefore no *hubris* has been committed. Conversely, if the court decides that *hubris*, as lack of respect for the victim's claims to *timê*, has been committed, this concurrently certifies that the victim is in fact worthy of respect, that he possesses the *timê* he lays claim to.<sup>68</sup>

The neat scheme I have laid out here works at the level of the Athenians' conceptualization of the workings of *timê* and *hubris*, at the level of the abstraction of the law, and therefore in the context of the judicial sanctioning of *hubris* (at this level either something is deemed to be *hubris*, or it is not), but if we take into account the emotional effects of *hubris*, and the nuances introduced by any real life social interaction, then everything becomes of course more blurred. Any act of disrespect for one's claims to *timê* will cause anxiety in the victim as to whether the disrespect is justified (and considered justified by the reference audience, imagined or

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<sup>68</sup> Aristotle's definitions of *hubris* in the *Rhetoric* (1378b 29-30: ὕβρεως δὲ ἀτιμία, ὃ δ' ἀτιμάζων ὀλιγωρεῖ) should be read as referring primarily to the agent and his behaviour (as indicated by ὁ ἀτιμάζων, in the present), not objectively to the worth of the victim (see Section 3 above for this use of *atimia*), although the worth of the victim can of course be affected by the lack of respect for the victim's claims to *timê* (*atimia*) of the *hubristês* (τὸ γὰρ μηδενὸς ἄξιον οὐδεμίαν ἔχει τιμὴν, οὔτε ἀγαθοῦ οὔτε κακοῦ), according to the dynamics laid out in this section. The definition at 1378b 23-25 (ἔστι γὰρ ὕβρις τὸ πρῶττειν καὶ λέγειν ἐφ' οἷς αἰσχύνῃ ἐστι τῷ πάσχοντι, μὴ ἵνα τι γίγνηται αὐτῷ ἄλλο ἢ ὃ τι ἐγένετο, ἀλλ' ὅπως ἡσθῆ) does mention acts that may cause *αἰσχύνῃ* in the victim (and *αἰσχύνῃ* can mean either disgrace or a feeling of shame). Note, however, that the formulation here falls within the description of the *pathos* of anger, whose cause, *hubris*, is characterized as a kind of *oligôria* – it is entirely focalised on the agent and on his motivations, which explicitly entail nothing beyond the pleasure found in the performance itself. This formulation says nothing of the actual effects of *hubris* on the victim. On these passages see Cairns (1996) 1-8.

otherwise) and therefore reflects objective dishonour, actual lack of worth mirrored in the judgment of the person who disrespects and of the audience of the act. This grey area of anxiety and doubt means that hybriatic acts do actually produce fear of dishonour and therefore some level of shame, unless an unambiguous statement that these acts are hybriatic can be secured from an actual audience (and even then some anxiety may still linger).<sup>69</sup> This is exactly what the *graphê hubreôs* is meant to provide, but, as I have observed, at the risk of having, potentially, the opposite formally sanctioned, *viz.* the lack of *hubris* of the agent and therefore the actual dishonour of the victim.

The complex dynamic I have described comes to the fore also at 106, where Demosthenes, after the narrative of the many acts of *hubris* towards himself through the years, affirms metaphorically that Meidias, because of these repeated acts of *hubris*, has become Demosthenes' murderer (αὐτόχειρ), *viz.* his ruin. This seems to suggest that Meidias' actions have had the consequence of destroying Demosthenes, but it is soon clear that this is not exactly what Demosthenes means. Meidias has behaved hybriatically towards Demosthenes' preparations, body and expenditures at the Dionysia, and in the past (in the actions narrated since 77 and again at 110-11) had behaved hybriatically towards everything else – Demosthenes' city, family, *epitimia* (his prerogatives), hopes. But the damage evoked is only potential, never actualized: it is lack of respect for Demosthenes' prerogatives, identity and relations that would have destroyed Demosthenes' *timê* (as worth and claim to respect) if Meidias had been successful (εἰ γὰρ ἐν ᾧν ἐπεβούλευσε κατώρθωσεν). But Meidias never was, because, as Demosthenes has narrated in the previous paragraphs, the Athenians saw through his actions and identified them for what they were: manifestations of *hubris*. Once again, Demosthenes does not admit to losing any honour or status (to being humiliated) as a result of Meidias' actions, precisely because these actions have always been judged by the Athenians to be hybriatic, the result of his hybriatic disposition.

Because of this dynamic, the priority of the dispositional aspect of *hubris*, not only in how the notion was generally conceptualized (as explored by Cairns), but also in the arguments used in an actual case of *graphê hubreôs*, makes perfect sense. Proving that an act was hybriatic depended on establishing that the perpetrator was characterized by *hubris* as a disposition, which affected all of his conduct. Only if this could be proved, could the particular act(s) contested in court then be judged to be hybriatic. The arbiter of the hybriatic disposition, and of the hybriatic acts that resulted from it, was the community, making an assessment within and outside the courts. Within this framework, as Demosthenes states at 46, the victim is almost irrelevant to the determination of *hubris*, and therefore acts can be judged as resulting from *hubris* even if the specific victim has no claim, *vis-à-vis* the community of the Athenians, to *timê* – this is how the Athenians conceptualized *hubris* against slaves, as I shall show in the next section. But when the victim had actual claims to *timê*, as Demosthenes did, then the situation became more complicated, because hybriatic behaviour that asserts the *timê* of the *hubristês* beyond what is appropriate (*epitêdeios*) can result in disrespecting the legitimate claims of others.<sup>70</sup> By bringing such disrespect against himself to the attention of the judges, Demosthenes ran a risk: the decision of the judges on whether Meidias was characterized by *hubris* and had acted accordingly had implications for Demosthenes' own *timê*, because a decision of not guilty would have meant that Meidias' disrespecting of Demosthenes was judged to be appropriate, and therefore that Demosthenes' claims to respect were unfounded. This is why, throughout the speech as well as at the very beginning of it, before even

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<sup>69</sup> See now Fussi (2018) 141-46 for a discussion of the differences between humiliation and shame, and of how humiliation, even if considered unjustified by the victim, can still cause shame because of the possible (unfathomable) reactions of the public and society to it, and therefore of its consequences.

<sup>70</sup> Cairns (1996) 8-17, 32.

introducing himself as a victim, Demosthenes stresses the hybristic disposition of Meidias, the fact that this resulted in hybristic behaviour towards everyone, not just himself (*cf.* 7), and that the judges and all the citizens knew already of Meidias' *hubris*. Bringing this charge for acts of *hubris* against himself put his own *timê* on the line, and its preservation depended on establishing Meidias' more general hybristic disposition as recognized by the judges and the community.

#### 4. Conclusion: *hubris* against slaves the role of the *graphê hubreôs* in Athenian society

I have shown in this article, from the analysis of the only extant speech delivered in a *graphê hubreôs* (Dem. 21), that although *hubris* as prosecuted in judicial settings obviously manifested itself in specific acts and had a victim, the accuser, in order to prove the charge, did not focus on the action itself or on its effects on the victim (or on the victim's emotional response). He needed to prove that the act was only an episode of a more general hybristic conduct and the manifestation of a hybristic disposition, recognized as such by a wide audience of Athenians in many circumstances. The primary consideration in the charge was therefore the disposition of the perpetrator *vis-à-vis* the assessment of the community, and not the dishonour of the victim. *Hubris* was therefore conceptualized, as demonstrated by Cairns and confirmed by this analysis, as the agent's excessive self-assertion, as the overestimation of his claims to *timê*, which led him to arrogate to himself prerogatives that the community had not recognized in him, and was not willing to recognize. Because the overestimation of one's own claims to *timê*, beyond what is appropriate according to community standards and the community's assessment, has the tendency to clash with others' claims to *timê*, acts of *hubris* often involved disrespecting others. But treating others with *hubris* did not involve any automatic loss of *timê* (as worth or status) for the victim – what a verdict of *hubris* did in such cases was in fact to formalize the misalignment between the treatment to which the *hubristês* had subjected the victim and the victim's actual *timê* as worth, status and claim to respect. Thus *hubris* did not involve any simple transfer of *timê*, understood as a scarce non-material commodity, from the victim to the perpetrator. There was also no requirement that the victim should have actual claims to *timê* (recognized by Athenians) for the relevant act to be considered hybristic. All that was required was that the act should result from an overestimation of one's status and prerogatives (*timê*) in defiance of the community's assessment and of community standards.

The problems isolated in section 2, which have hampered our understanding of how *hubris* against slaves was conceptualized in Athenian law and Athenian legal discourse, disappear if we look at the issue within this framework. The formal recognition by a lawcourt (and individually by the Athenian judges) that *hubris* has been committed against a slave does not imply a parallel recognition of the slave's honour (of his claims to *timê*), which has been denied and 'stolen' by the *hubristês* (as if it were a scarce material commodity). When the victim does have claims to *timê*, a conviction for *hubris* also has the effect of attesting that these claims have been unjustly disrespecting by the *hubristês*, and therefore reaffirms them. But a conviction for *hubris* does not depend on the existence of such claims. It depends on the *hubristês*' overestimation of his own claims to *timê*, on his breach of communal standards and on the assessment of his behaviour as inappropriate and dishonourable by the Athenian judges. Thus a *hubristês* can be convicted of *hubris* against a slave without this conviction having any bearing on the slave's *timê* or status.

This is exactly how the two passages in which the orators discuss the provision forbidding *hubris* against slaves conceptualize the crime.<sup>71</sup> Aeschines discusses this provision in the

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<sup>71</sup> Hyp. fr. 120 and Lyc. 10-11.2 (= Athen. 6.266f-267a) are small fragments and lack full discussions, so nothing can be drawn from them, except that the law on *hubris* included *hubris* committed against slaves.

*Against Timarchus* (1.17), in a section in which he cites various laws that are evidence of the lawgiver's concern with sexual abuse and prostitution of underage boys.

It may be that someone at first hearing might wonder why on earth this term, slaves, was added in the law on *hubris*. But if you consider it, men of Athens, you will find that it is the best provision of all. For the legislator was not concerned about slaves; but because he wanted to accustom you to keep far away from *hubris* on free persons, he added the prohibition against behaving with *hubris* even against slaves. Quite simply, he thought that in a democracy, whoever is a *hubristês* towards anyone at all was not fit to live as a fellow citizen.<sup>72</sup> (Trans. Carey, modified)

Aeschines denies that the lawgiver intended to protect the slaves.<sup>73</sup> He argues that the aim of the law is to forbid a particular behaviour altogether. The point is that being a *hubristês*, whoever the victim, is unacceptable in a democracy. Aeschines, in formulating an argument that was meant to be palatable to and shared by the judges, explicitly denies that convicting a person of *hubris* against a slave has anything to do with protecting the slave, or with recognizing the slave's claims to *timê*. The passage also reminds us that the reference audience of an act of *hubris* assessed in a *graphê hubreôs* was a panel of judges composed exclusively of Athenian citizens, all free men, and many of them slave holders. In such an institutional context, it is unthinkable that *hubris* against slaves should be legally conceptualized as recognizing the slaves' absolute claims to *timê* (which imply absolute prerogatives and rights) – we have seen in section 2 that the rules of ownership applying to slaves were so comprehensive that there was virtually no limit to a master's power over them.<sup>74</sup> It was conceptualized as forbidding self-assertion and overestimation of one's own *timê*, which can result (but does not have to result) in the denial of the claims of those that actually have claims to *timê* – free persons.<sup>75</sup> Because such acts are expressions of a disposition, they are forbidden because the disposition is forbidden.

The same argument, again from the point of view of the free masters, is deployed by Plato (*Leg.* 7.777d) in the context of an exploration of how to avoid revolts and dangers at the hands of slaves. Plato states that one way of avoiding these problems is to treat slaves properly, not for their sake, but 'for the sake of ourselves'. And treating them properly consists in not committing *hubris* against them, but rather avoiding injustice towards them even more than we avoid it towards our equals. The rationale for this maxim has entirely to do with the disposition of the free and the masters (and nothing to do with the *timê* of the slaves): how one behaves when he deals with disempowered inferiors without rights is the ultimate test of one's

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<sup>72</sup> ἴσως ἂν οὖν τις θαυμάσειεν ἐξαίφνης ἀκούσας, τί δὴ ποτ' ἐν τῷ νόμῳ τῷ τῆς ὕβρεως προσεγράφη τοῦτο τὸ ῥῆμα, τὸ τῶν δούλων. τοῦτο δὲ ἐὰν σκοπήτε, ὦ ἄνδρες Ἀθηναῖοι, εὐρήσετε ὅτι πάντων ἄριστα ἔχει: οὐ γὰρ ὑπὲρ τῶν οἰκετῶν ἐσπούδασεν ὁ νομοθέτης, ἀλλὰ βουλόμενος ὑμᾶς ἐθίσει πολὺ ἀπέχειν τῆς τῶν ἐλευθέρων ὕβρεως, προσέγραψε μὴδ' εἰς τοὺς δούλους ὑβρίζειν. ὅλως δὲ ἐν δημοκρατία τὸν εἰς ὄντινον ὑβριστήν, τοῦτον οὐκ ἐπιτήδειον ἡγήσατο εἶναι συμπολιτεύεσθαι.

<sup>73</sup> On the use of the motive of the intent of the lawgiver see Johnstone (1999) 25-33; Harris (2013) 201-02; 270-71; Canevaro (2013a) 239-40.

<sup>74</sup> This does not mean that slaves could not be recognized as having a modicum of *timê* in particular contexts (see Section 4 above), but this recognition was contextual and pertinent to specific 'honour arenas' – it could not be absolutely recognized in the law, intended to be general and valid forever and in all contexts (see Canevaro (2015)).

<sup>75</sup> The argument therefore is not instrumental within the *Against Timarchus* in the sense that it is determined exclusively by the argumentative needs of Aeschines, *pace* Dover (1978) 38; Fisher (1995) 71-72. It is conditioned both by the institutional context (a lawcourt full of free Athenians, whose needs, ideas and preconceptions need to be accommodated to make the argument persuasive) and by the argumentative needs.

character.<sup>76</sup> Likewise, a fragment of Hecataeus of Abdera (*FGrH* 264 F25 = Diod. Sic. 1.76.6) concerned with the ancestral laws of the Egyptians provides a similar rationale to justify the provisions on homicide: ‘If someone willfully killed [a free man or] a slave, the laws ordered that he be killed, since the Egyptians wished that all men should be prevented from ignoble acts not through distinctions of circumstance, but by the consequences of their actions, and equally they wished to get men accustomed, in virtue of their concern for slaves, to be even less inclined to do any wrong to free men’ (trans. modified from Lang).

Dem. 21.46-50 has another version of this argument. Demosthenes states that in a charge of *hubris* the identity of the victim is irrelevant (οὐ γὰρ ὅστις ὁ πάσχων ᾤετο δεῖν σκοπεῖν); what matters is the nature of the behaviour (τὸ πράγμα ὁποῖόν τι τὸ γινόμενον), and *hubris* is unacceptable behaviour, which deserves the judges’ anger whoever the victim. Demosthenes then proceeds to describe the prohibition on *hubris* against slaves as a sign of the *philanthrōpia* of the law – this is a reference to the character of the Athenians, as this character was understood to be coherent with that of the laws: the Athenians often describe themselves as *philanthrōpoi*, in particular for their habit, in international relations, of helping the weak while not having any obligation to do so. While *philanthrōpia* does suggest a recognition of the slave’s humanity,<sup>77</sup> it does not imply any obligation following from this recognition, and therefore any *timē* of the slave.<sup>78</sup> Dem. 24.51-2 makes the implications of *philanthrōpia* very clear in discussing the law on supplications, which prevents those that have been convicted in court, or anyone else on their behalf, from making supplications in the Council or the Assembly: he states that the lawgiver enacted this prohibition because he was aware of the Athenians’ *philanthrōpia*, which has often damaged their interests, and wanted to prevent wrongdoers from taking advantage of it. The implication is that the *philanthrōpia* shown by the Athenians is directed towards those that do not deserve the favours they ask for. The wrongdoers have no right to lenient treatment and the Athenians have no obligation to deal leniently with them. They do so out of *philanthrōpia*, which comes into play when the leniency is not part of the kind of reciprocity that is fundamental to any interaction based on *timē* (as worth and recognition of that worth)<sup>79</sup> We should also not read too much in the expression οὐδὲ τοὺς δούλους ὑβρίζεσθαι ἀξιοῖ – ἀξιοῖ refers to the character of the action itself, not to any effects on the *timē* of the slaves or to any claim to ‘worth’ on their part.<sup>80</sup> This is clear from the

<sup>76</sup> Cf. Klees (1975) 165-67. Kant (1997) 212 (27:459) made the same point about animals: a man’s treatment of animals reveals his character. There are in fact considerable similarities between the foundations of some modern normative views about proper treatment of animals and ancient discourse about *hubris* against slaves. Note, for instance, that in Aristotle (*Hist. An.* 617b26, 630a9) *philanthrōpia* can be exercised towards animals (cf. n. 77 below). For a discussion of Kantian ethics and duties to animals, see Korsgaard (2004).

<sup>77</sup> This is clearly the case, given then etymological meaning of the term/concept. Yet we would probably do well not to push the implications of the recognition of this basic humanity too hard – after all (as noted in n. 76), Aristotle writes of *philanthrōpia* towards animals (*Hist. An.* 617b26, 630a9).

<sup>78</sup> On *philanthrōpia* in Athenian ideology as an attribute of the Athenians see Dover (1974) 201-05; Christ (2013); Canevaro (2016) 370-71; (2017b) 85-86. For later reflections on Athenian *philanthrōpia* see Holton 2017, and for the development on the concept in the Hellenistic period see Gray (2013).

<sup>79</sup> See Canevaro (2013) 132-38 on this law. Cf. Konstan (2005) 22-24 and (2006) 214-18 on Arist. *Poet.* 1453a2-6: *to philanthrōpon* is singled out by Aristotle as a possible sympathetic emotional reaction when a bad man is brought to ruin, in spite of the fact that the bad man deserves his ruin. Pity, on the other hand, has to do with undeserved misfortune, while *phobos* involves identification. Thus, also in Aristotle, *philanthrōpia* is characterized as an emotional reaction that is unrelated to desert, justice or status. An appreciation of the use of *philanthrōpia* in Attic oratory strengthens Konstan’s case on its place in Aristotle’s discussion of emotional reactions in the *Poetics*, *pace* e.g. Apicella Ricciardelli (1971-1972), Carey (1988) 137-39, Zierl (1994) 24, 28, 138, Heath (2008) 9-10 n. 31, who read *philanthrōpia* in this context as referring to pleasure in the wicked individual’s misfortune – the sight of a bad person’s fall into misfortune would be pleasing, gratifying.

<sup>80</sup> Note that the same context is reformulated a couple of lines later as οὐδὲ τούτους ὑβρίζειν ἀξιοῦσιν – ἀξιοῦσιν expresses the Athenians’ independent assessment of what constitutes honourable behaviour, it is about the actions, not about the ‘worth’ of the slaves.

following discussion. Demosthenes introduces the barbarians as fictitious interlocutors and pictures their amazement at the discovery that, despite the many wrongs the Greeks have suffered from them and the ancestral and natural hostility towards them, the Athenians criminalize *hubris* committed towards those barbarians that they have bought as slaves. He ironically concludes that if the barbarians knew of the law on *hubris*, they would make the Athenians collectively their *proxenoi*. Fisher reads in this passage an implicit admission ‘that the Athenians chose to extend to slaves legal protection against the evils of *hubris* out of genuinely humane sentiment towards the feelings of honour in these inferior beings’.<sup>81</sup> But there is no such admission in the passage: the point of the mention of *philanthrôpia* and of the whole rhetorical device of having the barbarians discuss the wrongs they have committed against the Greeks, the natural hostility etc., is precisely to describe the prohibition on *hubris* towards slaves as independent of any desert of the slaves, as supererogatory. The passage actually denies that the slaves have any claim to *timê* and stresses that they do not actually deserve the protection from abuse enforced by the law. They are given it not because of their claims to *timê*, but because the Athenians consider that behaviour unacceptable whoever the victim.

As it was conceptualized in Athenian law and public discourse, the prohibition on *hubris* against slaves did not recognize the slaves’ claims to *timê*. Its point was to sanction self-aggrandizing behaviour which reflected an individual’s overestimation of his claims to *timê* beyond community standards and what the community was willing to recognize in him. In what cases, and how often, the *graphê hubreôs* may have been used for behaviour against slaves is anyone’s guess. We should not assume that the scarcity of attestations in the sources must reflect the fact that the law was never used in this way.<sup>82</sup> The picture the orators provide of the people usually appearing in the Athenian courts, and of the kind of actions normally brought, is sketchy and arguably biased by the logographical nature of the extant speeches.<sup>83</sup> But because a charge of *hubris* needed to prove that the offender had overstepped his prerogatives, we may assume that *hubris* committed by masters against their slaves must have been exceptionally hard to prove, given the fact that, according to Athenian law, virtually any treatment of a slave (including killing him) was within the master’s prerogatives.<sup>84</sup> A good parallel for the situation in Athens, with the *graphê hubreôs* formally sanctioning abusive behaviour against slaves but not according them any rights *per se*, let alone *vis-à-vis* their masters and their extensive rights of punishing them, is that of the American South and the Caribbean. As Peabody explains, ‘In 1669, the Virginia House of Burgesses established that masters might kill their own slaves with impunity as they administered “due correction”.’ Paton points out that ‘Slaveholders had a great deal of power to punish their slaves privately. The first comprehensive Jamaican slave code, passed in 1664 ..., placed almost no limits on the slaveholder’s power to “correct” his or her slaves. Masters were not allowed to “wantonly” kill their slaves, but if a slave died in the course of a punishment for a “misdemeanor,” the law stated that “noe person shall be accomptable to any law.” The 1696 slave code, which persisted almost unchanged until 1788, did not mention what was to happen if a slave died in the course of being punished. It did make the “willing, wanton, or bloody-minded” killing of a slave a

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<sup>81</sup> Fisher (1995) 74.

<sup>82</sup> See n. 4 above.

<sup>83</sup> The picture offered by the *phialai* inscriptions, in Harris’ new interpretation (forthcoming b), is remarkably different.

<sup>84</sup> See Section 2 above for acceptable treatment of slaves. Cohen’s view that the law on *hubris* protected slaves from all sorts of abuse ((2000) 160-67; 1998, 116 n. 62), and Morrow’s that it allowed third parties to prosecute masters for mistreating their slaves (1937), are untenable, see Section 2 above.

“clergyable” felony, for which a person convicted would receive the minor punishment of being burned in the hand.’<sup>85</sup>

To speculate a bit, if mistreatment of a slave by the master was ever actionable in Athens, that must have been connected with the context of the abuse (and therefore with its audience): a master certainly had the right to beat his own slave to a pulp, but doing so in somebody else’s house against the host’s desires, perhaps in front of the womenfolk, or even worse during a religious ritual or at a procession, might have given rise to accusations of *hubris* – it was not among the master’s prerogatives to behave in such a way in that context. More usually, accusations of *hubris* against slaves must have arisen from mistreatment of other people’s slaves, presumably in those contexts in which social interaction between free and slaves was constant and random abuse of slaves would have been very disruptive of social life and economic activities.<sup>86</sup> The formal and informal sites of collective association discussed by Vlassopoulos and Sobak – workshops, associations, workplaces (for instance building sites), the commercial world of overseas trading, money-lending and banking, certain religious contexts, as well as the interactions of guests and entertainers at various *symposia* and festival-based banquets – are very likely candidates.<sup>87</sup> And, in fact, the only plausible case of *hubris* against a slave resulting in our sources in a legal action, that of the Rhodian lyre player assaulted by Themistius of Aphidna at the Eleusinia (Din. 1.23), has exactly one of these contexts as its setting.

I have argued in this article that, in the discourse and conceptualization of *hubris* at the level of Athenian law and institutions, the possibility of sanctioning *hubris* against slaves did not imply any recognition of the slaves’ claims to *timê*.<sup>88</sup> This argument applies to public discourse, ideology and law, but I do not claim that it applies more generally to social reality. As observed by Lewis in his criticism of Patterson’s definition of slavery, any attempt to remove slaves ‘*tout court* from the dialectic of esteem and honour that characterizes social relations in any society’ is deeply problematic.<sup>89</sup> Whenever, in any social context, one social actor interacts with another, there must be some level of reciprocal respect and recognition of the other’s claims, whatever the relative status of the actors. In Greek, these social dynamics, at all levels, were expressed in the language of *timê*, which meant that slaves were in fact in many contexts and relations recognized as possessing a level of honour. Fisher has usefully highlighted that in the advice on slave management that we find for instance in Xenophon’s *Oeconomicus*, praise and honour feature prominently as instruments to incentivize slaves, and Ischomachus goes so far as to state that he treats his slaves as free men, ‘honouring’ them as *kaloi kagathoi* (14.6-10). He recognizes that they are capable of *philotimia*, and therefore accepts that they can become actors in social relations based on *timê*.<sup>90</sup> But we should not assume that the honour granted to a slave in the private context of a household, regulated and enforced by the master, or in the context of other informal relations, was automatically translatable to all other social and

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<sup>85</sup> Peabody (2011) 618 and Paton (2001) 926. For an actual example of such killings and the lack of legal consequences on the grounds that they were within the prerogatives of the masters (or the overseers) to discipline slaves, see the description of the overseer Mr. Gore by Frederick Douglass (Gates (2002) 356-57).

<sup>86</sup> A case in point would be Dem. 54.4.

<sup>87</sup> See Taylor and Vlassopoulos (2015) *passim* for these settings, and particularly Vlassopoulos (2015); Hunt (2015); Gabrielsen (2015).

<sup>88</sup> Lenient treatment could be justified, in the institutional context of the lawcourts, by appeals to *philanthrôpia*, which implies some recognition of the slaves’ humanity, and yet *philanthrôpia* did not involve the dynamics of reciprocity and the mutual obligations central to interactions based on *timê*, as shown elsewhere in this section.

<sup>89</sup> See Lewis (2017) against Patterson’s definition of slaves as (among other features) ‘generally dishonoured persons’ (Patterson (1982) 13).

<sup>90</sup> Fisher (1995) 55-57. See also Klees (1975) 82-83. On *philotimia* and its importance in Greek ethics and in particular in public honours and euergetism see Whitehead (1983); (1993); Liddel (2007) 166-70; Ferrucci (2013); Canevaro (2016) 78-79, 83-87; Domingo Gygax (2016) 211-12, 220-25.

institutional spheres. As Appiah has shown, a person's status and honour are variable depending on the actual or internalized audience (for instance one can be quite honoured in one group and deeply dishonoured in another). Rabbås uses the expression 'arena of honor' which he defines as 'the practical context within which a person's honorable status is practically relevant and something to be respected'.<sup>91</sup> Whatever *timê* a slave may have been accorded within his household by his master *vis à vis* other slaves, or in other informal contexts even *vis à vis* free individuals, it is very clear that no such *timê* was recognized in slaves at the level of the laws and institutions of the Athenian state, where the reference audience were the Athenian citizens in various institutional capacities – the latitude the law left to masters in how they could treat and abuse slaves, and the length to which the orators went in denying any actual claims to respect for slaves are evidence of this.<sup>92</sup>

These considerations bring us back to the issue, which I introduced at the beginning of this article, of the relationship in Athens between the legal and institutional sphere, with its rules, values and conceptualizations of social life, and the 'free spaces' where social and economic interactions regularly occurred across the free/slave divide. As Vlassopoulos has observed, we cannot, and should not, assume that ideas and conceptualizations normally at work in the institutional sphere automatically reflect social reality.<sup>93</sup> We should rather investigate the reasons for these values and rules, as well as how they interacted with the more fluid social dynamics of the associations, workshops, 'free spaces' that composed the texture of Athenian society. Legal discourse on the issue of *hubris* against slaves in fourth-century Athens is evidence that, whatever the social capital a slave could accrue in various formal and informal sites of collective association (*viz.* in particular 'honour arenas'), that *timê* (as status, worth, social capital) was explicitly not recognized in the institutional sphere, *viz.* in the 'honour arena' of the Athenian state as managed by the Athenian citizens. Acknowledging any such *timê* in slaves would have meant recognizing that they possessed a modicum of rights and prerogatives, which would have clashed unacceptably with the rights of ownership of the free as slave-masters, one of the central preoccupations of the legal order.<sup>94</sup> On the other hand, a clearer understanding of the law on *hubris* allows us to nuance the opposition postulated by some scholarship between the social reality and the formal institutions of the state. The law on *hubris* denied slaves any claim to *timê* and yet, without any conceptual contradiction, still managed to forbid and sanction abusive behaviour, even against slaves, that could hamper the smooth working of those formal and informal sites of collective association whose importance for the success of democracy Sobak has so persuasively demonstrated. The Athenian citizens, in their institutional role, did not acknowledge the *timê* of slaves, but they exercised strong control on each free individual's claims to *timê* and policed excessive self-assertion and overestimation of one's claims. This made strong demands on individuals as to what constituted honourable behaviour, in a variety of formal and informal social contexts. These demands, and legal devices such as the *graphê hubreôs* which were in place to enforce them, are evidence, at the level of the Athenian state, not of opposition to interactions across formal

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<sup>91</sup> Rabbås (2015) 634; Appiah (2010) 19-22 speaks of the 'honor world' as 'a group of people who acknowledge the same codes'. This understanding of 'honour arenas' which are separate yet connected has points of contact with the 'choral' approach to social history advocated in Azoulay and Ismard (2018).

<sup>92</sup> See Section 2 above on the powers of masters over their slaves, and this section on the explicit denial of the slaves' claim to *timê* in the lawcourts. It is interesting that at Xen. *Oec.* 14.6-10 Ischomachus states that he acts as a legislator over his slaves, governing them by a hybrid body of laws drawn from Solon, Dracon and the King of Persia. In this context, the owner is like the tyrant of his own little kingdom, described as completely separate from the *polis* at large, with its own laws and therefore a very distinctive 'arena of honour'.

<sup>93</sup> Vlassopoulos (2016).

<sup>94</sup> On the centrality of the concept and rights of ownership in Greek slavery (and in manifestations of slavery), against attempts to deny the centrality of this aspect, see Lewis (2018) 25-81 and *passim*.



legal boundaries, but rather of a concern for facilitating them and making them secure while preserving at the same time the absolute rights of free slave owners.<sup>95</sup>

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<sup>95</sup> In the economic sphere, the *dikai emporikai* and the rules on the enforcement of contracts are evidence of similar preoccupations for securing the viability of interactions across legal statuses. Lanni (2016) 85-98 denies that the law on *hubris* was really enforced for *hubris* committed against slaves, but she does argue (in line with what I argue here) that the law's 'expressive power' had the effect of conditioning behaviour and therefore protecting slaves involved in social, and particularly economic, interactions with the free.

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